

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PT INTERACTIVE,

Plaintiff,

v.

TELEVOX SOFTWARE, INC., *et al.*,

Defendants.

CASE NO. C03-3018RSM

ORDER GRANTING DEFENDANT'S
MOTION FOR FEES

This matter comes before the Court on defendant TeleVox Software's motion for attorneys fees pursuant to the Washington State long arm statute, RCW 4.28.185. (Dkt. #25). Plaintiff has opposed the motion for fees, arguing that because the case was voluntarily dismissed without prejudice, defendant is not a "prevailing party" as required by the statute. (Dkt. #30).

Having reviewed defendant's motion, plaintiff's objections, defendant's reply, and the remainder of the record, the Court hereby finds and ORDERS:

(1) Defendant's motion for attorneys fees (Dkt. #25) is GRANTED. Under RCW 4.28.185, a party is entitled to seek attorneys fees if the defendant is "personally served outside the state on causes of action enumerated in this section, and prevails in the action . . ." RCW 4.28.185(5). Washington State courts have clearly established that even when the plaintiff

1 voluntarily dismisses its claims, the defendant is considered to be a prevailing party. As
 2 explained in *Anderson v. Gold Seal Vineyards, Inc.*, 81 Wn.2d 863 (1973), “where there is a
 3 dismissal of an action, even where such dismissal is voluntary and without prejudice, the
 4 defendant is the prevailing party.” *Anderson*, 81 Wn.2d at 867; *see also Beckman v. Wilcox*, 96
 5 Wn. App. 355, 262 (1999).

6 The cases relied upon by plaintiff in its opposition are inapposite to this case. *See, e.g.*,
 7 *Washington v. O’Connell*, 84 Wn.2d 602, 605 (1974) (interpreting RCW 4.28.125 as applying
 8 to a party who prevails “on the merits”). The Washington Supreme Court has expressly
 9 determined that the long arm statute does not require a judgment on the merits in order to
 10 recover attorneys fees. In *Scott Fetzer Co. v. Weeks*, 114 Wn.2d 109 (1990), the court
 11 explained:

12 We do not believe this is a proper interpretation of the long-arm statute’s fees
 13 award provision. . . . 4.28.185(5) authorizes an award of reasonable attorney
 14 fees to a defendant who, having been hailed into a Washington court under the
 15 long-arm statute, ‘prevails in the action’. The statute says nothing to suggest
 16 that awards are permitted only when the defendant prevails on the merits.
 17 Nor does our case law support a “merits” limitation.

18 Scott Fetzer, 114 Wn.2d at 112. Accordingly, the Court finds that defendant is entitled to
 19 attorney fees pursuant to RCW 4.28.185.

20 (2) Defendant shall submit a separate petition for attorneys fees, setting forth the amount
 21 requested with supporting documents for those fees, and properly noting such motion on this
 22 Court’s motion calendar.

23 (3) The Clerk is directed to a copy of this Order to all counsel of record.

24 DATED this 19th day of May, 2005.

25 

26 RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE